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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

* * *

NO. 75-1907

* * *

SAMMY JOE CHAVEZ,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

* * *

RESPONSE IN OPPOSITION TO GRANTING
OF PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

* * *

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* * *

**TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:**

NOW COMES the State of Texas, Respondent herein, and files this response in reply to Petitioner's Petition for Writ of Certiorari heretofore filed herein.

OPINION BELOW

The opinion of the Supreme Court of Texas is reported at 533 S.W.2d 746 (Tex. 1976) and is set forth in the appendix to Petitioner's Petition for Writ of Certiorari.

JURISDICTION

The decision of the Supreme Court of Texas was entered on January 28, 1976. Motion for Rehearing was denied on March 3, 1976. This Court's jurisdiction is invoked under Title 28 U.S.C., Section 1257 (3). Accordingly, the jurisdictional requirements would appear to be satisfied, although Respondent refutes Petitioner's contention that any right guaranteed by the Constitution of the United States has been denied him.

QUESTIONS PRESENTED

- 1. WHETHER THE SUPREME COURT CAN RENDER ANY DECISION IN THE INSTANT LITIGATION IN THE ABSENCE OF AN ACTUAL DISPUTE OR CONTROVERSY.**
- 2. WHETHER A JUVENILE, HAVING BEEN FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE WITNESS, WAS DENIED DUE PROCESS AND EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Of concern here are the Fourteenth Amendment to the Constitution of the United States and Article III to the Constitution of the United States.

State statutes involved herein appear at pages 3-5 of Petitioner's Petition for Writ of Certiorari and include Article 38.14, Texas Code of Criminal Procedure and Section 54.02, Texas Family Code; however, the

portions of Section 54.02, Texas Family Code, appearing in Petitioner's Petition for Writ of Certiorari are Section 54.02 §(a) and §(f) rather than Section 54.02, §(a) and §(b) as it appears therein. In addition, Article 5143d, Vernon's Annotated Texas Statutes, is applicable.

STATEMENT OF THE CASE

"On August 14, 1974, an armed robbery occurred at a restaurant in Odessa, Texas. An employee on duty at the time of the offense reviewed a police lineup and identified only the man who held the gun during the robbery. The accomplice witness, identified by the witness in the police lineup, testified at the hearing that he held the gun and that he and the petitioner had both participated in the armed robbery. The State on its own motion agreed to strike all of the witness' testimony concerning the in-court identification of the petitioner, leaving the record void of any evidence linking petitioner to the armed robbery other than the testimony of the accomplice witness. The trial found that petitioner did engage in the delinquent conduct..." *Matter of S.J.C.*, 533 S.W.2d 746 (Tex. 1976).

Subsequent to the finding that Petitioner did engage in delinquent conduct, the trial court did, on August 29, 1974, commit Petitioner to the Texas Youth Council. Petitioner was admitted to the Texas Youth Council on September 11, 1974, where he remained until June 11, 1975. On June 16, 1975, Petitioner was placed on parole to the Ector County Juvenile Parole Office. Petitioner was finally released from parole and finally discharged on April 14, 1976.

AGRUMENT AND AUTHORITIES

1. WHETHER THE SUPREME COURT CAN RENDER ANY DECISION IN THE INSTANT LITIGATION IN THE ABSENCE OF ANY ACTUAL DISPUTE OR CONTROVERSY.

Petitioner's presumptions and theories notwithstanding, there is no live, ongoing controversy within the meaning of Article III, United States Constitution, upon which this Court can render an opinion. As of April 14, 1976, Petitioner was finally discharged from any supervision or control of the Texas Youth Council; and from that date, the State of Texas has had no authority, control or supervision over him since that date. Tex. Rev. Civ. Stat. Ann., Art. 5143d. In short, although Petitioner alludes to continuing jeopardy until his eighteenth birthday, the fact is that he is in no jeopardy now and cannot be in the future for the offense at issue in this litigation. The matter is moot.

The long-standing rule that the Supreme Court is not to render advisory opinions is most applicable here. No decision rendered by this Court in the instant litigation can have any future effect on Sammy Joe Chavez; and without some direct effect on the rights of Petitioner, the Supreme Court should recognize its duty to decide only actual controversies and not to render abstract, advisory opinion. *Local No. 8-6, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Missouri*, 361 U.S. 363 (1960). The fact that Petitioner asserts the unconstitutionality of a state court's determination does not alter the need to closely follow these principles. A federal court cannot hold any state statute or decision void, because irreconcilable with the Constitution of the United States, except in a situation where it is called upon to decide the ongoing legal rights of litigants.

Baker v. Carr, 369 U.S. 186 (1962); *Preiser v. Newkirk*, 95 S.Ct 2330 (1975).

Finally, this Court is asked to decide this issue because of its effect on related evidentiary issues directly affecting the administration of proceedings in juvenile courts. (Petitioner's Petition for Writ of Certiorari, p. 11). Such rationale simply does not rise to the level of a concrete legal issue, presented in actual cases, not an abstraction or supposition, which is required for a decision to be rendered by this Court. *North Carolina v. Rice*, 404 U.S. 244 (1971); *Golden v. Swickler*, 394 U.S. 103 (1069).

II. WHETHER A JUVENILE, HAVING BEEN FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE WITNESS, WAS DENIED DUE PROCESS AND EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT.

It is indisputable that some of the procedural safeguards guaranteed adult criminal defendants in state court proceedings by the Fourteenth Amendment to the United States Constitution are also guaranteed to juveniles in delinquency proceedings, and fundamental fairness is the measure to be used to decide applicability. *In re Gault*, 387 U.S. 1 (1967). As correctly stated below by the Texas Supreme Court, Title III, Texas Family Code, has adhered to this principle and specifically protected the fundamental rights set out in *Gault* and its progeny, *In re Winship*, 397 U.S. 358 (1970). *Matter of S.J.C.*, 533 S.W.2d 746, 748 (Tex. 1976). The question presented here is not one of fundamental fairness.

This Court has clearly indicated that the use of accomplice testimony is a matter evidentiary in nature and not of constitutional magnitude. *United States v. Augenblick*, 393 U.S. 348, 352 (1969). Relying upon this pronouncement, the Texas Supreme Court properly concluded that the use of uncorroborated evidence goes to the weight or sufficiency of the evidence to be considered by the trier of fact. *Matter of S.J. C., supra* at 749. Indeed, a host of federal criminal convictions make it clear that the use of accomplice testimony, *per se*, raises no problem in the area of fundamental fairness. *United States v. McSweeney*, 507 F.2d 298 (9th Cir. 1974); *United States v. Stanley*, 433 F.2d 637 (5th Cir. 1970). Thus, this Court should recognize that the requested review is a review of sufficiency of the evidence herein, and that does not present a proper federal question. *Hopkins v. Wainwright*, 458 F.2d 393 (5th Cir. 1972); *Young v. Alabama*, 443 F.2d 854 (5th Cir. 1971).

Similarly, the asserted unconstitutionality of the use of accomplice testimony as violative of equal protection guarantees is without merit. This Court has clearly recognized that the mere fact that some procedural safeguard is provided adults does not mandate that the same is wholly applicable to juveniles. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). Juvenile proceedings in Texas are not now and are not intended to be full-blown criminal trials, and the requested relief asserted by Petitioner would be one more step toward replacing the informal and rehabilitative aspects of juvenile court proceedings and "remak[ing] the juvenile proceeding into a full adversary process." *Id.* at 545. This Court has wisely avoided that result in the past and should avoid it here.

CONCLUSION

For the reasons stated above, Respondent asserts that there are no constitutional violations presented and the Petition for Writ of Certiorari should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Lee C. Clyburn, Administrative Assistant Attorney General of Texas, Attorney for Respondent, do hereby certify that a copy of the above and foregoing Response in Opposition to Granting of Petition for Writ of Certiorari to the Supreme Court of Texas has been deposited in the United States mail by certified mail,

return receipt requested, on this the ____ day of July, 1976, to the following: Melvin L. Wulf and Martin Guggenheim, American Civil Liberties Union Foundation, 22 East 40th Street, New York, New York 10016; Clifford J. Hardwick, 309 North Grant, Odessa, Texas 79761.

**Lee C. Clyburn
Administrative Assistant
Attorney General**